No. 12968.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MONTE CLY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE.

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Preliminary Statement.

This is an appeal from a judgment of the United States District Court for the Southern District of California, Central Division, entered April 13, 1951, by which the appellant was adjudged guilty of the offense of bribery after return by a jury of a verdict of guilty as to Counts Three, Four, Five, Seven, Eight, Nine and Eleven.[1] Appellant was charged in Counts Five and Eleven with a violation of 18 U. S. C. (1946 Edition), Section 207 [Clk. Tr. 6, 9], and in Counts Three, Four, Seven, Eight and Nine with a violation of 18 U. S. C. (new Edition), Section 202 [Clk. Tr. 4, 5, 7, 8]. The District Court sen-

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[1]Clerk's Transcript (hereinafter referred to as Clk. Tr.), p. 37.

tenced the appellant to eighteen months in a penitentiary as to each of said counts, to run concurrently [Clk. Tr. 37 and 38]. In addition, fines in varying amounts were assessed as to each of said counts, but appellant is not to stand committed for failure to pay said fines.

Notice of appeal to this court was filed by appellant on April 13, 1951 [Clk. Tr. 39 and 40].

Jurisdictional Statement.

A. The District Court had jurisdiction to try the offenses[1] committed prior to September 1, 1948, under:

18 U. S. C., Sec. 546[2] (Mar. 4, 1909, Chap. 321, Sec. 340, 35 Stat. 1153), which provides as follows:

> "The crimes and offenses defined in this title shall be cognizable in the district courts of the United States as prescribed in Section 41 of Title 28."

And under:

28 U. S. C., Sec. 41, Subdiv. 2 (Mar. 3, 1911, Chap. 231, Sec. 24, 36 Stat. 1091) which provides as follows:

> "*Original Jurisdiction.* The district courts shall have original jurisdiction as follows:
>
> (1) * * *
>
> (2) *Crimes and offenses.* Second. Of all crimes and offenses cognizable under the authority of the United States."

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[1]Of bribery, see Appendix C for the bribery statutes involved.

[2]All references in this brief to 18 U. S. C. and 28 U. S. C., except where otherwise indicated, are to the old edition, *i. e.,* to the 1940 edition preceding (new) title 18 and (new) title 28, each of which became effective September 1, 1948.

B. The District Court had jurisdiction to try the offenses committed subsequent to September 1, 1948 under (new) 18 U. S. C., Sec. 3231, which provides as follows:

> "The district courts of the United States shall have the original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.
>
> Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof. June 25, 1948, c. 645, 62 Stat. 826."

C. This Court has jurisdiction of the appeal under (new) 28 U. S. C., Sec. 1291 (June 25, 1948, Chap. 646, 62 Stat. 929), which provides as follows:

> *"Final Decisions of District Courts.*
>
> The courts of appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, * * * except where a direct review may be had in the Supreme Court."

And under (new) 28 U. S. C., Sec. 1294, Subdiv. (4), which provides in pertinent part as follows:

> *"Circuits in which decisions reviewable.*
>
> Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:
>
> (1) From a district court of the United States to the court of appeals for the circuit embracing the district."

Statement of the Case.

A. General Background Facts.

The appellee contraverts the appellant's opening statement of the case[1] for the reason that it is argumentative, interpretative, incomplete and the facts set forth are put in the light most favorable to the appellant. Some of the alleged facts therein recited are contrary to the finding of the jury. There will be no attempt by appellee to argue the case in any portion of this brief, except that portion devoted to argument. The following summary of the evidence pertinent to the questions before this court is submitted as a more objective synopsis.

The indictment filed in this case on August 10, 1950, jointly charged Monte Cly and Lindsey T. Hill in fourteen counts with a violation of Sections 18 U. S. C. 207 and (new) 18 U. S. C. 202, officials asking and accepting bribes. In February, 1951, the case against defendant Hill was dismissed by the District Court on motion of the Government [Rep. Tr. 244].

The appellant Monte Cly was a resident of the Bay Area, and for twenty years had been in the real estate and general contracting business in that section.[2] The jurisdiction of Rent Advisory Board No. 8 included that coastal section of Los Angeles County known as the Bay Area [Rep. Tr. 187, see Map, Plaintiff's Exhibit 11][3] and there were approximately 75,000 rental units in this area [Rep. Tr. 312]. Cly maintained a real estate and general con-

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[1]Appellant's Opening Brief (hereinafter referred to as App. O. B.), pp. 8-14, incl.

[2]Reporter's Transcript (hereinafter referred to as Rep. Tr.), pp. 372, 373.

[3]Plaintiff's Exhibits will hereinafter be referred to as Ptf's Ex.

tracting office at 32 Avenue 17, Venice, California. Appellant and Lindsey T. Hill used this office in connection with rent advisory matters [Rep. Tr. 200, 463].

On November 6, 1947, Cly signed the Oath of Office as a member of Rent Advisory Board No. 8, Los Angeles Defense Rental Area, and at the trial both sides stipulated to the fact that Cly took the Oath of Office and signed it on November 6, 1947 [Rep. Tr. 239, 445; see Oath of Office in Ptf's Ex. 14].

In November, 1947, four members of the Advisory Board No. 8 had been appointed but the Board could not function until it had five members so Hill was appointed [Rep. Tr. 462]. The full membership of Advisory Board No. 8 included Lindsey T. Hill, Monte Cly, Mr. O'Brien, Mrs. Smith and Mrs. Wilke [Rep. Tr. 185, 389, 390]. Hill took his oath of office on January 12, 1948 [Rep. Tr. 183, 238; see Oath of Office in Ptf's Ex. 14]. Hill immediately became Chairman of this Board [Rep. Tr. 250] and the Board organized for business about the 12th of January, 1948 [Rep. Tr. 376, 394].

The Board usually held a meeting once every two weeks [Rep. Tr. 184] and this meeting was held at the Area Rent Office, 1206 Santee Street, Los Angeles [Rep. Tr. 185, 350]. The only persons present at the Board meetings were the members and the Secretary, Mrs. June Luscher [Rep. Tr. 185, 186]. Outsiders, such as tenants and landlords, were not allowed at the meetings and Hill testified, "I think during the entire period of time only two came in protesting, but they weren't allowed at the meetings." [Rep. Tr. 186].

The advisory board members served without compensation [Rep. Tr. 303] and both Hill and Cly knew this [Rep. Tr. 215.] The only provision for payment of

money to them was for mileage and per diem whenever they were away from their official station overnight [Rep. Tr. 306]. The boards were provided with a secretary-stenographer who was employed by the Area Rent Director in Los Angeles, but who was always available to board members [Rep. Tr. 214, 304]. Mrs. June Luscher was the secretary of all twelve advisory boards in Los Angeles County, including Advisory Board No. 8 [Rep. Tr. 312, 344].

The duties of the secretary consisted of arranging meetings for the board, bringing the files to be considered to the meetings, taking notes of actions of the board at meetings and keeping the files in order [Rep. Tr. 328]. Both decontrol and rent increase matters came before Local Board No. 8 [Rep. Tr. 331]. A carbon copy of the minutes of every meeting was sent to each of the four board members and the original was sent to the Chairman, Mr. Hill [Rep. Tr. 347]. Hill generally took his copy of the minutes to Cly's office [Rep. Tr. 268].

Immediately after the Board was organized for business in January, 1948, there was much newspaper publicity in the Bay Area regarding the fact that an Advisory Board had been set up and that Hill and Cly were members of that Board [Rep. Tr. 250, 376, 394, 442]. As a result, beginning about March, 1948, people began bringing rental problems to Cly's office day and night [Rep. Tr. 376]. Around June of 1948 Hill and Cly agreed between themselves to start charging fees for services rendered to landlords [Rep. Tr. 478, 251]. The agreement was that Hill and Cly were to divide 50-50 whatever moneys were rereceived, regardless of who received them [Rep. Tr. 392]. Cly had the office and connections and would get "clients"

while Hill made out the necessary papers for the landlords [Rep. Tr. 202, 277, 520]. Cly testified that Hill "did most of the work on it, but that is the way we agreed to do it" [Rep. Tr. 392]. They never reported to Koepke or any other official that fees had been collected [Rep. Tr. 283].

Hill and Cly made charges for their services when the units involved were big units and where "we felt we could do some good" [Rep. Tr. 283, 377]. Charges were made in approximately 10% of the cases handled by Hill and Cly [Rep. Tr. 283, 378]. Cly estimated that 150 to 200 cases were handled free, and 15 to 17 cases where fees were charged [Rep. Tr. 378]. Cly testified that "there may be a few more you don't have" charged in the indictment [Rep. Tr. 470]. No record was kept of the cases where charges were made [Rep. Tr. 378, 483]. Hill and Cly never divided any of these moneys with any other Board member [Rep. Tr. 282]. Both tenants and landlords came to Cly's office, or contacted Cly for assistance [Rep. Tr. 377, 470], and the percentage was approximately 60% landlords and 40% tenants [Rep. Tr. 250]. Cly testified no charges were ever made to a tenant but that landlords "more or less voluntarily" paid them. "Yes, we accepted it (money from landlords). We had to do something to keep living, yes, we accepted it." [Rep. Tr. 470.]

Mr. Ben C. Koepke was the Area Rent Director, Los Angeles Defense Rental Area, during the entire period that Cly and Hill were members of Rent Advisory Board No. 8, and held such position until Los Angeles was decontrolled on December 30, 1950 [Rep. Tr. 528]. Mr. Koepke testified regarding the organization, function and purpose of the local rent advisory boards in general, and

Advisory Board No. 8 in particular [Rep. Tr. 306-312, incl.].

Under the Rent Control Act either a tenant or a landlord could file his petition for relief with the Los Angeles Office of the Area Rent Director [Rep. Tr. 308]. The Los Angeles office would in the normal course then process the application, make the necessary inspections, and decide upon the order that should then be issued in the particular case. Generally 30 to 60 days elapsed between the filing and the resulting order [Rep. Tr. 209]. When the resulting order from Mr. Koepke's office was unsatisfactory to the petitioner, such aggrieved person could appeal to his local Advisory Board [Rep. Tr. 306]. The intention when the local advisory boards were set up in 1947 was for the Area Rent Director to have an opportunity to pass on a petition before the matter ever came before an Advisory Board [Rep. Tr. 307]. It was never intended that advisory boards should file petitions on behalf of tenants or landlords. The function of the local advisory boards was purely to advise and make recommendations to the Area Rent Director in "hardship" cases [Rep. Tr. 307, 308]. If these recommendations were "anywhere reasonable" Koepke's office generally followed them [Rep. Tr. 309].

The application for relief by a tenant or landlord could be brought before the local advisory boards for consideration and recommendation by either having the petitioner by letter request the clerk of the Board to have the Board review the case [Rep. Tr. 308], or by having a member of the advisory board request the clerk of the board to place a particular case on the agenda for their next regular meeting [Rep. Tr. 309]. Cly and Hill "very often" requested that certain matters be placed on the agenda

for consideration and Mrs. Luscher, the Clerk and Secretary of the Board would do so [Rep. Tr. 329, 258]. Cly and Hill at various times requested Mrs. Luscher to put on the agenda both "direct applications to the rent office or applications for review by the board." She could not recall of any other member of Advisory Board No. 8 who ever requested her to place either or both an application for original consideration or an application for review on the agenda for a board meeting [Rep. Tr. 354].

Hill testified that he and Cly requested that "deserving" cases be brought before Advisory Board No. 8, and in every instance where such requests were made they were granted by Mrs. Luscher [Rep. Tr. 258, 271]. Cly testified that he never made an unfavorable recommendation on a matter in any case where a fee had been received [Rep. Tr. 465] and he admitted that cases in which fees had been accepted came before the board in regularly called meetings [Rep. Tr. 465, 421, 434, 435]. Hill testified that at the Board meetings in cases where fees had been accepted "we would always recommend it (the action requested) and we would state why we were recommending it; that we had looked it over and we felt that it was—that they should get a raise." [Rep. Tr. 214.]

In connection with their operations Cly and Hill would visit and inspect the properties involved in a particular case in which a fee was ultimately collected and then would check the comparable rentals on adjoining properties at the Los Angeles Rent Director's Office [Rep. Tr. 256, 391]. The duties of an advisory board member did not require them to personally inspect property [Rep. Tr. 269]. The other three members of Advisory Board No. 8 inspected property only a half dozen times at the most [Rep. Tr. 393, 282].

Cly and Hill drove down to the Area Rent Director's Office, 1206 Santee Street, Los Angeles, practically every day. Cly's car was used because Hill did not have a car and Cly would drive Hill to Los Angeles and bring him back [Rep. Tr. 391]. Cly testified that money was taken only after the property had been "checked over," comparable rents noted, he and Hill felt an increase was justified, and they knew how much the work would be [Rep. Tr. 410, 411]. Cly testified he and Hill had access to files in the Los Angeles office of the Rent Director [Rep. Tr. 497] and Mrs. Luscher cooperated well with them [Rep. Tr. 499].

Cly's resignation was by letter to Rent Director Koepke dated January 13, 1949, and his resignation was effective as of January 15, 1949 [Rep. Tr. 457, see letter in Ptf's Ex. 14]. This resignation was at Koepke's request [Rep. Tr. 456-459, incl.] and had been preceded by conversations between Cly and Koepke regarding Cly's accepting fees [Rep. Tr. 523, 524, 317, 318, 319].

Mrs. Luscher testified Hill and Cly were "always" present at board meetings [Rep. Tr. 330] and a majority of three was sufficient to carry any recommendation at a meeting [Rep. Tr. 214]. Hill verified this statement [Rep. Tr. 184]. Cly testified "toward the last there was only three" board members present at most meetings, Hill, Cly and Mr. O'Brien [Rep. Tr. 396]. Certain members of the Advisory Board No. 8 tried to resign but Cly testified, "We tried to hold them—we tried to hold the Board together." Only Hill and Cly resigned [Rep. Tr. 471] in early 1949. Cly never took steps to resign even though the job became burdensome [Rep. Tr. 456].

Cly admitted that he was told at the time he agreed to become a member of Advisory Board No. 8 what his

duties would be and how much time would be required [Rep. Tr. 375]. Cly also admitted he received a handbook of instructions to advisory board members [Rep. Tr. 443, 444].

B. Facts Regarding Count Three.

Mr. and Mrs. Claude W. Chapman owned an apartment house at 407 Ocean Front, Venice, California [Rep. Tr. 14]. Mr. Chapman telephoned Cly's office one day and made an appointment to come down the following day with his wife to discuss his rental problem [Rep. Tr. 16]. Mr. and Mrs. Chapman went to Cly's office and there had a conversation in the presence of Hill, Cly and the office secretary [Rep. Tr. 16]. Mr. Chapman said the date of this transaction is the date on which the $50 check was given to Monte Cly, December 6, 1948 [Rep. Tr. 19, Ptf's Ex. 1]. Cly recalls having a conversation with Chapman but he could not fix the date as December 6, 1948, merely because that was the date on the check [Rep. Tr. 410]. Cly testified that the date of the conversation "could have been after Mr. Hill was down there and knew what he was going to do or how much he was going to do in there, because it wouldn't—the check and the date would be after the time it had been checked over and gone through before anything would be done" [Rep. Tr. 410].

Prior to the formation of Advisory Board No. 8, Chapman had applied for a rental increase to the O. P. A. [Rep. Tr. 25]. He gave all of these papers to Hill and Cly at the time of the December 6, 1948, conversation [Rep. Tr. 16]. Both Hill and Cly were present when one of them stated to Chapman that they would fix the

papers up and would send the papers to the Rent Control Director and that Chapman would be given a $15 increase on each apartment [Rep. Tr. 20]. The price asked for by Hill and Cly was $10 per apartment and Chapman had 12 apartments [Rep. Tr. 21]. Chapman objected to this charge and replied that he "could get the apartment house people to do it for nothing" [Rep. Tr. 28]. Hill replied to this: " 'it will have to go through our Board' and that it would get quicker action this way" [Rep. Tr. 29]. Chapman agreed to pay $50 and his wife wrote a check for this amount payable to Monte Cly [Rep. Tr. 21, 209, Ptf's Ex. 1]. Hill testified at the trial that he had never seen this $50 check before [Rep. Tr. 210].

Hill prepared Chapman's application for a rental increase and submitted it to the Los Angeles Office of the Area Rent Director [Rep. Tr. 548, see Ptf's Ex. 18], and in preparing this application Hill checked the files in the office of the Los Angeles Rent Director to see what the comparable rentals in this area were [Rep. Tr. 548]. Cly's office was only eight blocks from the Chapman apartment house [Rep. Tr. 414] and he knew the comparative values in the area very well [Rep. Tr. 415]. After promising to make out the papers in this matter Hill told the Chapmans that they would hear from Cly and Hill later [Rep. Tr. 26]. Following this conversation in Cly's office, Hill came to the Chapman apartment house two or three times and an inspector from the Area Rent Director's office also inspected Chapman's premises [Rep. Tr. 38].

C. Facts Regarding Count Four.

Mr. and Mrs. Harry Neiditch owned an apartment house at 1341 14th Street, Santa Monica [Rep. Tr. 69], and there were from 14 to 15 apartments in the building [Rep. Tr. 218]. Cly recalled that Mrs. Neiditch came into his office. Some one had told her to come down to see Cly and Hill in regard to making out papers for rental increases on her place and she asked Cly who handled such matters [Rep. Tr. 416]. Mrs. Neiditch saw both Cly and Hill [Rep. Tr. 73]. Hill testified that Cly asked him to look over this property and Hill later did.

Mrs. Neiditch recalls the conversation in Cly's office with Hill and she places the date of the conversation as the date of the $250 check, payable to cash, which she gave to Hill on that occasion. The date of the check is November 15, 1948 [Rep. Tr. 76, Ptf's Ex. 5]. Hill definitely recalls receiving a $250 check from Mrs. Neiditch and he identified the check [Rep. Tr. 219, Ptf's Ex. 5]. He recalls that he gave Cly one-half the proceeds of this check and he did so approximately three minutes after Cly introduced Hill to the Manager of a Venice Bank where the check was cashed [Rep. Tr. 220]. Cly admits receiving one-half the proceeds of this check [Rep. Tr. 418].

The next day Mrs. Neiditch wanted to verify the fact that she had not fallen "into a trap" so she went back to Cly's office where in the window she saw "something about the OPA Board . . . and then I was sure I was dealing with competent people" [Rep. Tr. 76].

Hill inspected the property involved, thought that the apartments merited a rental increase and so advised the Neiditches [Rep. Tr. 218]. Hill obtained the description

of the property and all data and then made up the necessary papers to send to the Area Rent Control Office in Los Angeles requesting an increase [Rep. Tr. 218]. Cly testified that he knew Hill "worked on" this case for two and a half months at least, and that Hill was there at the property at least once a week. Cly denied that he knew this property. "I never went into Santa Monica." [Rep. Tr. 417.] The papers were signed and Hill mailed them to the Area Rent Control Office in Los Angeles [Rep. Tr. 218].

Hill testified that the Board met and considered this case and recommended an increase in rent. Cly was present at this meeting of the Board [Rep. Tr. 221, 264].

D. Facts Regarding Count Five.

Cly testified he was introduced to Don Greco by Hill at Greco's restaurant on Wilshire Boulevard. Cly recalls that he subsequently inspected Greco's property located at 126 Palisades, Santa Monica [Rep. Tr. 419]. This property had six bungalows on it [Rep. Tr. 174]. Hill's best recollection corroborates this meeting in Greco's restaurant, and his subsequent inspection of the property with Cly [Rep. Tr. 198]. Both before and after money was paid by Greco, Cly expressed an opinion to others that Greco's rentals were very, very low and should be raised [Rep. Tr. 420].

Cly went with Hill to these premises more than once and he could not recall whether he and Hill had taken the pictures submitted with Greco's rental application or not, although "sometimes we went out and took pictures" [Rep. Tr. 421].

Greco testified that Hill and Cly visited his house [Rep. Tr. 169, 170] after Greco had already contacted Hill about getting his rents raised. Hill and Cly carefully looked over the property [Rep. Tr. 175]. During the conversation Cly said that the property was well worth the raise and that Greco should get it. "He said they would help me, and at the conclusion he said it would cost me some expense money" [Rep. Tr. 171]. Greco asked how much, Cly said $300 and Greco thereupon paid $300 in cash [Rep. Tr. 171, 172, 178]. During this entire conversation Greco presumed Hill was a member of the Rent Advisory Board [Rep. Tr. 172]. A lady had suggested Hill as the person to contact for rental increase relief and for that reason Greco had gone to see him [Rep. Tr. 173].

Hill and Cly both recall that they checked comparable rentals at the Area Rent Director's Office in Los Angeles prior to filing the application for rent increase on behalf of Greco [Rep. Tr. 198, 498, 499]. Hill testified that he did the work in this case but one-half of the $300 received was given to Cly because "I did the typewriter work, and he being a real estate man knew of clients" [Rep. Tr. 201, 202].

The records of the Area Rent Director's office in Los Angeles indicate that the original rental increase application was signed by Greco on June 29, 1948 [Ptf's Ex. 23]. Hill testified that he believed photographs of Greco's property were furnished to him and that he sent the photographs with the application for rent increase to the Area Rent Director's Office [Rep. Tr. 552].

Hill testified that he made up all the papers filed by Greco with the Area Rent Director's Office [Rep. Tr.

546, Ptf's Ex. 23], and stated that he filed these papers [Rep. Tr. 189] after Cly and Hill visited Greco's home. Inspectors from the Area Rent Director's Office inspected Greco's property two or three times [Rep. Tr. 175]. Hill thinks he accompanied inspectors to the property [Rep. Tr. 192]. Hill testified that "We asked for some inspectors to come out before it went before the Board" [Rep. Tr. 260]. Hill recalls receiving a reinspection letter from the Area Rent Director's Office in regard to this matter [Rep. Tr. 193, Ptf's Ex. 12].

At the time Hill filed Greco's application for rental increase he knew that the matter would come before Rent Advisory Board No. 8 in the future [Rep. Tr. 199]. Greco presumed at the time of his conversation with Hill and Cly that his request for rental increase would come before the Board [Rep. Tr. 178].

Cly recalled that the Greco case was before the Board for "quite awhile" [Rep. Tr. 421, Ptf's Exs. 12, 13, 14] and that he and Hill requested two or three inspections to be made by the Area Rent Director's office [Rep. Tr. 421]. There is no dispute that $300 in cash was received by Hill and Cly from Greco [Rep. Tr. 421.] Hill corroborates the fact that this case was before the Board [Rep. Tr. 556] and Cly was always present [Rep. Tr. 192]. Cly clearly recalls that Local Advisory Board No. 8 strongly recommended a rental increase on this property [Rep. Tr. 468]. Cly recalled that the Greco matter came before a number of meetings of Rent Advisory Board No. 8 [Ptf's Exs. 13, 14 and 15]: the August 2, 1948, meeting [Rep. Tr. 423]; the August 13, 1948, meeting [Rep. Tr. 422]; the November 1, 1948, meeting [Rep. Tr. 424], and the November 15, 1948, Board meeting [Rep. Tr. 425].

Greco testified that approximately three or four months after he paid the $300 to Cly and Hill he received permission to raise his bungalow rentals $5 per month [Rep. Tr. 174, 175].

E. Facts Regarding Count Seven.

Norman Wescoatt in 1948 was made the executor for the estate of Lily Billon and this estate owned property located at 1102 Nowita Place, Venice [Rep. Tr. 129]. There were four units at the Norwita address, but Wescoatt paid Hill and Cly $100 for services in connection with a total of 11 units [Rep. Tr. 138].

Wescoatt read in the Venice paper that Cly and Hill were members of the Rent Control office [Rep. Tr. 140, 143]. After Wescoatt saw the long line waiting at the Los Angeles Rent Office he paid a call to the Venice office of Cly the address of which he had seen in the newspaper [Rep. Tr. 140, 141]. Wescoatt thought Cly's office was a subsidiary of the Los Angeles Rent Director's office [Rep. Tr. 144]. When he arrived in Cly's office Wescoatt noticed the sign "Monte Cly Building Contractor" but he nevertheless thought that this was the rental office [Rep. Tr. 147]. Wescoatt was told by Cly that he would have to go to Los Angeles because there was no rental control office in Venice. Wescoatt then stated that he wanted to make out an application for rental increase and Cly replied "I will call Mr. Hill, he handles that" [Rep. Tr. 132, 146]. Wescoatt testified that he thought Hill and Cly were past members of the Rent Advisory Board and were doing the work of seeking rental increases as their regular private employment [Rep. Tr. 144].

Wescoatt places the date of this conversation as on or about November 20, 1948 [Rep. Tr. 130]. Hill inspected the property on two or three occasions [Rep. Tr. 137, 224]. After Hill had inspected the property Wescoatt again had a conversation with Cly at which time Cly said "We will do the whole job for $100" [Rep. Tr. 138]. Wescoatt thereupon paid the $100 in cash to Cly in the presence of Hill. No receipt was given [Rep. Tr. 133, 138, 225]. Cly recalls this property and testified that he examined the property [Rep. Tr. 429]. Cly inspected the property two or three months prior to the date he received $100 in cash, November 20, 1948 [Rep. Tr. 430]. Cly came to the conclusion that this property merited the rental increase prior to the date he was paid $100 on it, and he told Wescoatt the property deserved an increase [Rep. Tr. 431].

Hill testified that he prepared the rental increase application and the attached schedule which was received by the office of the Area Rent Director, Los Angeles [Rep. Tr. 224, 549, Ptf's Ex. 21]. Cly admits filing these papers for Wescoatt, admits receiving $100 and admits giving Hill one-half of this amount [Rep. Tr. 431].

Hill recalls "quite well" that the Wescoatt matter was brought before local Advisory Board No. 8 and that the Board recommended that a rental increase be granted [Rep. Tr. 224-225]. Cly admits recommending a rental increase in this case [Rep. Tr. 431]. Hill testified that Cly was present and that he was sure that Cly voted for the rent increase "because it took a majority of the—lots of times the others were against us so we would turn it down. It took three of us to pass a recommendation." [Rep. Tr. 225.]

Approximately three months after the payment of $100 to Hill and Cly, Wescoatt received notification from the Area Rent Director that a rental increase had been allowed on his units from $25 per month to $27 per month per unit [Rep. Tr. 136, Ptf's Exs. 6, 7, 8, 9].

F. Facts Regarding Counts Eight and Nine.

Mrs. Mabel Preston was ill and unable to testify at the trial regarding her dealings with Cly and Hill but her sister, Mrs. Frances Barker, did testify. Mrs. Preston owned the properties referred to in Count Eight of the Indictment. Mrs. Barker owned the properties referred to in Count Nine of the Indictment. The two sisters jointly owned the property at 543-549 Lincoln Boulevard, Santa Monica, California [Rep. Tr. 154].

Mrs. Barker testified that she and her sister read an article in a Santa Monica newspaper that Cly's office was a branch of the Los Angeles Rent Control office. The article gave the address of Cly's office and designated that address as the place for "hardship and hardluck cases" [Rep. Tr. 156, 167]. Cly admitted that the community knew of him and Hill as being members of Advisory Board No. 8 and further that "these two sisters told us that . . . we helped some friends of theirs" and that they wanted to get their property straightened out [Rep. Tr. 507, 508]. Mrs. Barker testified that she understood Cly's office was for hard luck cases and she and her sister went to inquire whether or not they could get rental increases [Rep. Tr. 156]. Mrs. Barker at the time thought Cly and Hill were members of Rent Advisory Board No. 8 [Rep. Tr. 162].

Cly recalled that the first conversation regarding these properties was with one of the sisters when she came to

his office and "stayed there practically all day until I went out and looked at her place on Santa Monica Boulevard." [Rep. Tr. 431, 504, 505.] Cly stated that he had work done on this case in the form of inspecting the property and visiting the rental office in Los Angeles for comparables before any moneys were accepted from either of the sisters [Rep. Tr. 506]. Cly testified that when the money was received from these sisters the rental problem had already been presented to him [Rep. Tr. 505].

The next occasion that Cly had a conversation in this matter was when the two sisters came into his office [Rep. Tr. 505]. Mrs. Barker places the date of this conversation on or about September 4, 1948, in Cly's office in Santa Monica [Rep. Tr. 155]. Cly introduced Hill to the sisters and then Hill left the office leaving Cly with the two sisters [Rep. Tr. 161]. Cly recalls the two sisters "argued" in his office for a good hour and a half [Rep. Tr. 504]. During this conversation Cly told them that there was a chance for a raise in rents and set a price for his services of $15 per unit. Mrs. Barker had three units and she paid a total fee of $45 to Mr. Cly [Rep. Tr. 157]. Her sister, Mrs. Preston, owned six units and paid Cly $90 in the presence of Mrs. Barker [Rep. Tr. 158, 159]. These payments by both sisters were in cash and no receipts were given by Cly [Rep. Tr. 167].

Hill testified that he prepared the applications and schedules for rental increases which were submitted to the Area Rent Director's office in Los Angeles and he identified papers in the file from that office as having been prepared by him [Rep. Tr. 544, Ptf's Ex. 20]. Hill also stated he visited the Los Angeles office of the Area Rent Director to investigate comparable rentals in the vicinity of the properties involved in Counts Eight and

Nine [Rep. Tr. 550]. Cly admitted that papers were filed with the Area Rent Director on behalf of these sisters and stated that these properties "could have come up before the Board but I don't recall that" [Rep. Tr. 505]. In his testimony in connection with this case Cly testified "We do quite a bit of that (going to the Santee Street office of the Area Rent Director, making applications, filling out papers, inspecting property) even before we accept a fee" [Rep. Tr. 506].

Hill stated that he saw these sisters regarding their properties once a week for a year [Rep. Tr. 550].

The sisters received authorization from the Area Rent Director, Los Angeles, California, in April or May, 1949 to increase the rentals on certain of the properties involved [Rep. Tr. 159, 160].

G. Facts Regarding Count Eleven.

Mr. and Mrs. Frank Cohen owned rental property located at 209 and 209½ Clubhouse Drive, Venice, California. This property of the Cohen's was located two and one-half blocks from Cly's Venice office where he had a contracting and real estate business [Rep. Tr. 233]. Mr. Frank Cohen died October 19, 1950 [Rep. Tr. 124]. Mrs. Cohen testified that she remarried and is now Mrs. Rose Rubin [Rep. Tr. 122].

Cly testified that the Cohens brought all of their papers to Cly's office at Cly's suggestion and he had Hill present and all the papers were read. At all times after that meeting Hill handled the matters [Rep. Tr. 433]. Cly testified that this matter "started . . . around June (1948)" [Rep. Tr. 500].

There is no dispute that money was received from the Cohens in this matter by Cly. Cly testified that he recalls the amount to be $10 to $15 [Rep. Tr. 435] although the price agreed upon by the parties was $50 [Rep. Tr. 436]. After Hill had testified that $35 had been received from the Cohens, Cly later testified "somewhere in that neighborhood, yes." [Rep. Tr. 436.] Cly testified that before any money was received from the Cohens he was of the opinion that the Cohens were entitled to an increase in rent [Rep. Tr. 435].

Hill prepared the application and schedule filed with the Area Rent Director, Los Angeles, requesting the rental increase and he identified papers in the file from that office as having been prepared by him [Rep. Tr. 543, Ptf's Ex. 19]. Hill recalls that he talked to Mrs. Luscher, Clerk of Advisory Board No. 8, about the Cohen case and that after the overcharge by the Cohens was cleared up he filed the necessary papers requesting a rental increase [Rep. Tr. 550, 551].

Cly believed that an application for a rental increase was filed in this matter [Rep. Tr. 435] with Rent Advisory Board No. 8 and recalled definitely that when the matter came before the Board "We recommended an increase" [Rep. Tr. 434, 435].

Mrs. Luscher prepared the minutes for Advisory Board No. 8, and she identified the minutes of the September 13, 1948, meeting as having been minutes that she prepared [Rep. Tr. 339, Ptf's Ex. 14]. A portion of the minutes of this meeting refer to the property owned by Frank Cohen and the Board recommended an increase in rent [Rep. Tr. 339, 340].

ARGUMENT.

I.

The Indictment Sufficiently Alleged and the Evidence Sufficiently Showed That Appellant Was a Person Acting for and on Behalf of the United States Under or by Virtue of the Authority of an Agency of the Government.

A. The Indictment Sufficiently Stated an Offense Against the Laws of the United States.

Count One of the Indictment was sufficient in its allegation that Cly "On or about Nov. 6, 1947, signed the oath of office as a member of Rent Advisory Board No. 8 of the Los Angeles Defense Rental Area and continued to serve as a board member until his resignation on January 15, 1949 . . . Cly . . . (was) duly appointed pursuant to . . . the Housing and the Rent Act of 1947." This portion of Count One was incorporated by reference into each and every other count of the indictment.

Where the indictment alleges facts which set forth the elements of the offense the indictment is sufficient, even though the allegations are not in the statutory language. *United States v. Marcus* (C. A. 3, 1948), 166 F. 2d 497, 501.

An indictment is sufficient if it alleges facts with sufficient clearness to show a violation of law and to enable the defendant to know the nature and cause of the accusation, and to enable the defendant to plead the judgment, if one is rendered, in bar of further prosecution for the same offense. *United States v. Behrman,* 1922, 258

U. S. 280, 288, 42 S. Ct. 303, 304, 66 L. Ed. 619, and *United States v. Canella* (D. C. Cal., 1945), 63 Fed. Supp. 377, 379, affirmed by this Court in 157 F. 2d 470.

There is no mention of an oath in either of the statutes involved (old) 18 U. S. C, Section 207 or (new) 18 U. S. C., Section 202. The statutes refer to a "person acting for or on behalf of the United States, in an official capacity, under or by virtue of the authority of any department or" agency thereof. In *Crinnian v. United States* (C. A. 6, 1924), 1 F. 2d 643, 645, the court in a case of first impression reviewed the authorities and concluded that the allegation in the indictment that Crinnian was "a federal prohibition agent" was a sufficient allegation that he was at least a "person acting for and on behalf of the United States in any official capacity under or by virtue of the authority of any department or office of the government thereof" within the bribery statute as it then read, Section 117 of the Criminal Code.

In *King v. United States* (C. A. 5, 1902), 112 Fed. 988, 994, an indictment was upheld where the indictment did not specifically, in clear cut terms, charge the official capacity of the defendant at the time he was charged with receiving the bribe in question. However, the court held that, after verdict, there was a sufficient description of the official capacity of the defendant when the indictment alleged that he received the said bribe "with intent to influence his . . . official action in the payment of money . . . which said matter and things . . . were then and there pending before [him], or might be

brought before him in his official capacity, by virtue of the authority vested in him, . . . by the War Department."

There is no requirement in the basic section on oaths of office (5 U. S. C., 16) for any formalized procedure in the administration of an oath. While the oath must be administered by one authorized to do so, the Congress in 1948[1], empowered any employee in the Office of Housing Expediter, when designated by the Housing Expediter, "to administer to or take from any person an oath" when such instrument was required. There is no question but what Cly was given the oath by an employee of the Los Angeles Housing Expediter's office.

In the recent case of *Malatkofki v. United States* (C. A. 1, 1950), 179 F. 2d 905, the defendant and another were convicted for giving money to a governmental employee to influence the action of that employee in awarding contracts for the sale of tools to the Veterans Administration. The indictments charged that the defendants gave money to the federal employee with the corrupt intent to influence such employee in awarding government contracts "which matter came before him (the federal employee) in his official capacity." On appeal the defendants contended that the indictment did not state an offense. The appellants contended that under the statute involved, 18 U. S. C. 91 (1946 Ed), the quoted words were insufficient

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[1]Chapter 775, Section 101, 62 Stat. 1197, June 30, 1948 (50 App. U. S. C. 1822a).

in that they referred to a past matter and that this was contrary to the statute which, like the bribery statutes involved in the instant appeal, required an intent to influence an official in a matter which may be pending, or a matter which may come up in the future.

The court at page 909 disposed of the appellants' arguments with the prefatory remark that, "On this point, defendants advance what seems to us to be a hypercritical reading of the indictments." The court then discussed the matter, cited cases and concluded that the indictment did state an offense.

B. The Evidence Sufficiently Showed That Appellant as a Member of Local Advisory Board No. 8 Was a Person Acting for and on Behalf of the United States in an Official Capacity, Within the Bribery Statutes Involved.

The evidence clearly showed Cly, at all times involved herein, actively participated in official meetings of Advisory Board No. 8. It was stipulated at the trial that Cly took the oath of office. This stipulation made it unnecessary for the Government to produce evidence regarding the manner of giving the oath and that Cly was duly appointed as alleged in the indictment. The Housing and Rent Law (Appendix C) provided for such position and the duties and responsibilities thereof.

The evidence was undisputed that at all times from November 6, 1947 to January, 1949, Cly attended board meetings and voted on matters at the board meetings and was generally one of the most active, if not the most active, members of Advisory Board No. 8. Cly's mem-

bership on the board was by his own admission, known to the community and his contacts with the community in the seven counts herein were in the capacity of a person acting for or on behalf of the United States in an official capacity.

For cases holding that various persons were persons acting for and on behalf of the United States in an official capacity within bribery statutes the attention of the court is directed to the following:

An employee of the Market Administrator for the New York Metropolitan Milk Marketing area.

> *United States v. Levine* (C. A. N. Y. 1942), 129 F. 2d 745;

A draft board member is an officer or a person acting on behalf of the United States.

> *United States v. Bordonaro* (D. C. N. Y. 1918), 253 Fed. 477.

An OPA investigator could be convicted under (old) 18 U. S. C. 202, as either an officer of the United States or a person acting on behalf of the United States in an official capacity.

> *United States v. Holmes* (C. A. 3, 1948), 168 F. 2d 888.

It is therefore submitted that the evidence sufficiently showed that at all times mentioned in this case Cly was a person acting for and on behalf of the United States in an official capacity.

II.

The Gist of the Offense Charged in This Case Was the Acceptance of Money With the Understanding That Appellant's Official Conduct Would Be Influenced.

The gist of the offense charged is the acceptance of money with the understanding that Cly's official conduct should be influenced.

As the District Court stated in *United States v. Canella*[1] 1945, 63 Fed. Supp. 377, 379:

> "The gist of the offense is not the execution of the agreement for which the bribe is taken, but the acceptance of money, contracts or gratuities with the understanding that the officer's (Army officer) official conduct shall be influenced." The court cited as authority *Fall v. United States* 1932, 60 App. D. C. 124, 49 F. 2d 506; *Whitney v. United States* (C. A. 10, 1938), 99 F. 2d. 327.

A. It Was Immaterial That the Housing Act Did Not Expressly Proscribe Bribery.

The argument made by appellant (App. O. B. 15) that the Housing and Rent Act of 1947 did not expressly forbid the taking or acceptance of money for services rendered in connection with the Act is entitled to no weight.

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[1]Affirmed by this Court in 157 F. 2d 470 (1946).

It is also true that neither the Housing and Rent Act of 1947, nor the Act of 1948, authorized such taking or acceptance of money for services rendered in connection with the Act. Such an argument by appellant overlooks the crime charged. The appellant was charged with acceptance of bribes. This offense is set forth in a statute that is a part of the criminal code and by the very language of the statute it pertains to all officers of the United States or persons in official capacities acting in behalf of the United States. To require Congress to specifically write into every new act or expressly incorporate by reference into every new act a bribery provision would be absurd.

It is submitted that the record clearly shows that the jury had ample basis to support its verdict that Cly accepted money to influence his official conduct as a member of Rent Advisory Board No. 8. Further it is submitted that appellant's argument that the Housing and Rent Acts did not prohibit charges being made for rendering services under the Acts is entitled to no weight.

B. It Was Immaterial Whether or Not the Bribery Resulted in Rental Increases for the Property Owners Who Paid Fees to Cly.

As the above *Canella* case pointed out, the gist of the offense here is the acceptance of money *with the understanding* (emphasis added) that the official conduct shall be influenced.

In *Cole et al. v. United States* (1944), 144 F. 2d 984, this Court affirmed a conviction in a case where a member of a

local draft board (Schnee) and a Government appeal agent (Cohen) conspired to ask a bribe from a draftee. The official action to be influenced by the bribe was a recommendation by the local draft board to the Army for an extension of the draftee's furlough. Before the conspiracy was formed the Army had acted favorably on the furlough application. Appellant in the *Cohen* case contended there was therefore no matter pending before Cohen in his official capacity.

This Court rejected this contention and it is submitted that an analogy exists in this case.

As to six counts in this appeal the evidence clearly shows that the matters were before the board in official session, and admittedly acted upon favorably. Only Count Three lacks direct evidence that the matter was acted upon in formal board session. Even in this count, however, there is testimony by Hill that he prepared the papers filed with the Area Rent Director [Ptf's Ex. 18].

It is submitted that it is immaterial to this bribery charge that the evidence did not show Cly was successful in obtaining rental increases in each of the seven counts. Further, appellee submits that even as to Count Three the proof was sufficient to sustain the verdict because Cly and Hill knew when they inspected Chapman's property and accepted the $50 that if Chapman were not given a rental increase by the Area Rent Director after Hill filed the application, then the Board would have an opportunity to make a recommendation.

C. In a Charge of Accepting a Bribe the Decree of Receptivity of the Person Giving the Money Is Immaterial.

In *Malatkofski v. United States* (C. A. 1, 1950), 179 F. 2d 905, the defendants were convicted of giving money to influence the official action of a federal employee. Defendants' urged in the appeal that the corrupt arrangement to pay the bribe originated with the federal officer and that the jury should have been instructed that the defendants could not be convicted if this were true. The court, on page 918 of the report, disposed of this point in favor of the Government:

> ". . . nothing in the language of the statute suggests that the crime of bribery is negatived if the evidence shows that the first overtures came from the public official indicating that he would be receptive to the tender of a bribe."

While the facts in the instant appeal are different, the appellant has made the point in this record that the persons who gave Cly the money did so willingly. Appellee does not wish to argue the facts as to whether or not money was given Cly willingly. The jury found that Cly accepted bribes, not fees for services rendered, and it is submitted under the above authority that the degree of receptivity of the person giving the bribe was immaterial.

D. In the Offense of Bribery It Is Immaterial Whether the Official Action Sought to Be Influenced Was Right or Wrong.

In the transcript of this case Cly consistently stated he accepted money to perform "services" for landlords seeking rental increases only on those properties where he felt an increase was deserved. He appears in this record as a modern day "Robin Hood." Cly himself testified to the consistency of his position when he stated that he never made an unfavorable recommendation at a Board meeting in any case where he had accepted a fee [Rep. Tr. 465].

In the recent case of *Daniels et al. v. United States,*[1] 1927, 17 F. 2d 339, cert. den. 274 U. S. 744, this Court restated the well settled principle that in the offense of bribery it is immaterial whether the official action sought to be influenced is right or wrong. In the *Daniels* opinion, on page 343, this Court continued:

> " 'Nor is a public officer to be held acquitted of the charge of bribery because that which he agreed to accept as a bribe for doing, was no more than he was legally bound to do' " (citing cases).

While this appeal does not concern a public officer who was legally bound to perform a duty, it is submitted that the legal principle applies. This principle applied to this case makes it immaterial that Cly felt that rental increases were deserved in cases where he accepted money.

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[1]Cited with approval in *Whitney v. United States* (C. A. 10, 1938), 99 F. 2d 327, 330.

III.

The Action to Be Affected by the Bribe Was a Part of the Established Procedure of Rent Advisory Boards and Was Consistent With the Authority of the Office of Housing Expediter.

The evidence in this case showed that the action to be affected by the bribe was the recommendation of Advisory Board No. 8 to the Area Rent Director that rentals should be increased on the various properties involved in the seven counts. The testimony of Cly himself showed that the established practice of himself and Hill was to inspect the property and investigate comparable rentals before they would accept money to obtain the rental increase. Cly testified regarding certain counts that he was convinced a rental increase was warranted, and he so advised the property owner, even before money was accepted.

The evidence is clear that it was part of the established procedure for Local Advisory Board No. 8 to make recommendations to the Area Rent Director regarding rental increase and decontrol matters. There is no dispute that the law provided for this (see Appendix C). The evidence further showed that such recommendations were accepted by the Area Rent Director whenever they were within reason. Such acceptance of the Area Rent Director was consistent with the authority of his office (See Appendix C). Thus the action to be affected by giving the bribe to Cly was within the bribery statutes under which he was indicted.

In the recent case of *Cohen et al. v. United States* (1944), 144 F. 2d 984, cert. den. 65 S. Ct. 440, 323 U. S. 797, 89 L. Ed. 636, withheld 65 S. Ct. 441, rehearing den. 65 S. Ct. 586, 324 U. S. 885, 89 L. Ed. 1435, this Court affirmed the conviction of Cohen and Schnee on a charge

of conspiring to ask a bribe. At pages 987 and 988 of the report, this Court said:

> "To constitute the offense of bribery within the meaning of 18 U. S. C. A., §207, it is sufficient if the action to be affected by the bribe was a part of any established procedure consistent with the authority of a governmental agency (citing cases)."

It is submitted that the action to be affected by the bribe in this case was a part of the established procedure of rent advisory boards and was consistent with the authority of the Office of Housing Expediter and thus was within the statutes involved.

IV.

There Was Sufficient Competent Evidence That the Matters in Which Appellant Accepted Monies Were Matters Pending Before Him in His Official Capacity as a Member of Rent Advisory Board No. 8.

A. The Scope of the Appellate Court in Reviewing the Sufficiency of the Evidence to Support the Verdict.

1. The Evidence Must Be Viewed in the Light Most Favorable to the Government.

The Court has recently restated this well settled rule in *Henderson v. United States* (C. A. 9, 1944), 143 F. 2d 681, 682:

> "It is a familiar principle, which it is our duty to apply, that an appellate court will indulge all reasonable presumptions in support of the rulings of a trial court and therefore that it will draw all inferences permissible from the record, and in determining whether evidence is sufficient to sustain a conviction, will consider the evidence most favorably to the prosecution (citing cases)."

2. The Weight and Credibility of the Evidence Is for the Jury to Determine.

A verdict rendered on facts which it is the province of the jury to decide is conclusive on appeal. (*Cunningham v. Springer* (1907), 27 S. Ct. 301, 204 U. S. 647, 51 L. Ed. 662; *Reconstruction Finance Corporation v. Bankers Trust Company* (1943), 63 S. Ct. 515, 318 U. S. 163, 87 L. Ed. 680.)

Where the jury by its verdicts rejects as unworthy of belief the evidence offered by the defendant the appellate court is bound thereby. *Coplin v. United States* (C. A. 9, 1937), 88 F. 2d 652, where at page 664, this Court stated:

> "With regard to the foregoing testimony, as well as much of the other evidence discussed by the appellants, it should be borne in mind that the question of weight and credibility is for the jury and not for the court."[1]

Appellee agrees that defense counsel correctly stated during the course of the trial [Rep. Tr. 164], that the issue of whether or not the various matters involved in the seven counts herein were "pending before the board" was an issue to be resolved by the jury. The jury believed that they were.

At the trial the testimony of appellant was in conflict with the jury's general verdict of guilty as to the seven

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[1]See *Pasadena Research Laboratories v. United States* (C. A. 9, 1948), 169 F. 2d 375, 380, for later statement by this Court on same principle.

counts. The Court of Appeals is bound by a jury's finding of fact based on conflicting evidence. (*United States v. Gardzielewski* (C. A. 7, 1942), 125 F. 2d 138, cert. den. *Gardzielewski v. United States,* 315 U. S. 823.)

Appellant's Statement of the Facts and the detailed statement of facts in his Argument (App. O. B. 21-36, incl.) are stated most favorably to the appellant, contrary to the general finding of the jury, and must be disregarded by the Court.

3. The Only Question Presented Is Whether, Viewed in the Light Most Favorable to the Government, There Was Any Substantial Evidence to Support the Verdict.

The appellate court's function is exhausted when an evidentiary basis for the verdict of the jury becomes apparent, and it is immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable.

> *Lavender v. Kurn* (1946), 66 S. Ct. 740, 327 U. S. 645, 90 L. Ed. 916.

On appeal from the conviction on the ground of errors relating to the sufficiency of the evidence to support the verdict, the duty of the Court of Appeals is limited to the determination of whether there was any substantial evidence to sustain the verdict.

> *Craig v. United States* (C. A. 9, 1936), 81 F. 2d 816, rehearing den. 83 F. 2d 450, cert. den. 298 U. S. 690, rehearing den. 299 U. S. 620.

The function of the appellate court on appeal in a criminal case is ended once it is determined that there was some evidence competent and substantial before the jury fairly tending to sustain the verdict.

O'Leary v. United States (C. A. 9, 1947), 160 F. 2d 333.

B. There Was Substantial Evidence Supporting the Verdict Which Showed That the Matters in Which Appellant Took Bribes Were Matters Pending Before Him in His Official Capacity as a Member of Rent Advisory Board No. 8.

1. By Definition the Word "Pending" Means Any Action Begun but Not Yet Completed.

In *United States v. 2,049.85 Acres of Land, More or less in Nueces County, Texas* (D. C. Tex., 1943), 49 Fed. Supp. 20, 22, the court found that "pending" meant during, before the conclusion of, or prior to the completion of.

Black's New Dictionary, 3rd Edition, page 1345, defines the word as:

> "Begun, but not yet completed; unsettled; undetermined . . . Thus, an action is 'pending' from its inception until the rendition of final judgment." (Citing cases.)

See also:

Ex parte Craig (C. A. 2, 1921), 274 Fed. 177, 187;

Midkiff v. Colton (C. A. 4, 1917), 242 Fed. 373, 382.

2. The Landlord's Application for Rental Increase Became "Pending" Before Appellant in His Official Capacity When He Agreed to Assist the Landlord for a Fee.

The evidence showed that Cly and Hill as an established practice sought rental increases for landlords and that he and Hill always voted favorably for rental increases in those cases where a fee had been collected. There was widespread newspaper publicity given the fact that Cly and Hill were members of Rent Advisory Board No. 8 and there was testimony by some witnesses that they first went to Cly's office because they read in the newspapers that the office was the proper place to take rental increase problems. Both Cly and Hill testified that citizens of the area knew them as Board members and that Cly's office was used as their headquarters. Cly had been in the real estate and contracting business in the area for twenty years and was known in the area before he became a member of Advisory Board No. 8. He was known much better than Hill [Rep. Tr. 250]. The number of inquiries by citizens, 60% by landlords and 40% by tenants [Rep. Tr. 250], started to become burdensome on Cly around March, 1948. These inquiries became even more burdensome as time went on, with calls even being made at Cly's home. Yet Cly testified that he at no time offered to resign his position, and in fact he tried successfully to keep the other members of the Board from resigning. His resignation on January 15, 1949, was at the request of the Area Rent Director, Mr. Koepke, after Koepke learned that Cly had been accepting money. There is no evidence in the record that Cly at any time did anything to discourage citizens from continuing to make inquiries at his office or home regarding rental increases.

As a member of an Advisory Board, Cly knew that under the provisions of the Rent and Housing Act in effect during his tenure he would have an opportunity to make his and Hill's recommendation in a case as soon as an application for rental increase was filed with the Area Rent Director. The evidence showed that not only did Advisory Board No. 8 make recommendations in appeal cases, after the Area Rent Director had refused to grant a rental increase, but that Cly and Hill also had matters put on the Board's agenda even before the Area Rent Dirtcor had had an opportunity to pass on the matter [Rep. Tr. 354]. Certain of the exhibits in this case show that the rental increase action was *initiated by Rent Advisory Board No. 8* [see Ptf's Exs. 19, 20, 23]. As a Board member, Cly knew that the recommendations for rental increase were accepted by the Area Rent Director where they were reasonable.

The evidence clearly showd that Cly and Hill had their bribery scheme on a very business-like basis. Their agreement was to split the bribes on a 50-50 basis. Cly had the contacts, the office and would get the "clients" [Rep. Tr. 202], while Hill would do all the stenographic work. Hill had no car so Cly drove him down to the Los Angeles Area Rent Director's office practically every day. Cly, in his own testimony supplied the most crucial piece of evidence which established the organized manner of their bribe taking when he said:

> ". . . *there would be no charges unless we actually knew what the place is* (emphasis added), and whether we felt satisfied that it was justified for an increase and how much the work would be" [Rep. Tr. 411].

It is submitted that the foregoing summary of the general operation carried on by appellant and Hill makes it clear that when appellant agreed to assist a landlord in obtaining a rental increase and the fee was agreed upon, from that moment on the particular matter was "pending" before Cly in his official capacity as a Board member within the contemplation of the bribery statutes involved.

To accept the logic of appellant's argument to the contrary one would have to say that a judge could only be bribed when he has his judicial robe on, or that a United States Attorney could only be bribed while he was in the Federal Building. The contemplation of the Congress in drafting the bribery statutes involved could not have been to so narrowly construe the meaning of "pending."

Here the evidence is clear that appellant had a lucrative bribery scheme organized and that he and Hill were selective in the cases they accepted. Cly testified money was taken only from landlords and it was paid "more or less voluntarily" [Rep. Tr. 470] by these landlords. Therefore, when the appellant set a fee in a matter he or Hill had inspected the premises and he was prepared to do whatever was necessary to obtain the desired rental increase. Such matter from that moment on became "pending" before him in his official capacity.

3. There Was Substantial Evidence Showing That the Chapman Matter (Count Three) Was Pending Before Appellant in His Official Capacity.

Cly himself recalled talking with the Chapmans, but his statement regarding the date of the conversation again showed the organized nature of the bribery scheme [Rep. Tr. 410] and showed that this matter was pending before

him. On that page in the transcript he was shown Mrs. Chapman's $50 check, dated December 6, 1948, made payable to Monte Cly [Ptf's Ex. 1] and he said:

> "No, that wouldn't fix any date. That could have been after Mr. Hill was down there and knew what he was going to do . . . *the check and the date would be after the thing had been checked over* . . ." (emphasis added).

Mr. Chapman testified that both Cly and Hill were present when the price to be charged was discussed. Chapman objected to the price of $10 per apartment and said he could get the apartment house people to file his papers for nothing. The reply of Hill again gave evidence of the organized nature of the scheme.

> "It will have to go through our Board" [Rep. Tr. 29].

The Chapmans agreed to the compromise figure of $50 and the check was written. Hill testified that he had never seen this check before. The check bears the handwritten endorsement "Monte Cly."

There is no dispute in the facts that Hill filed the necessary application forms for the Chapmans and that Hill made various inspections of the Chapman premises.

It is submitted that there was substantial evidence to support the verdict, and particularly that the Chapman matter was pending before Cly in his official capacity on or about the date on which the check was given to Cly, December 6, 1948.

4. There Was Substantial Evidence Showing That the Neiditch Matter (Count Four) Was Pending Before Appellant in His Official Capacity.

The evidence is undisputed that Mrs. Neiditch gave to Hill a $250 check, dated November 15, 1948, made payable to cash [Ptf's Ex. 5]. Hill testified that he gave Cly half of the proceeds at the bank where the check was cashed [Rep. Tr. 220]. Cly admitted receiving half of this check [Rep. Tr. 418].

Cly testified he knew Hill "worked on" this case for two and a half months at least and that Hill was at this property at least once a week [Rep. Tr. 417]. On this same page in the transcript Cly emphatically denied that he knew this property because "I never went into Santa Monica." However, two pages later in the transcript Cly admitted that he inspected the premises of Don Greco, 126 Palisades in Santa Monica [Rep. Tr. 419, line 22].

Hill testified that he made the necessary inspections and filed the application in this case [Rep. Tr. 218]. Hill further recalled that the Board met and considered this case and recommended an increase in rental [Rep. Tr. 221]. Cly was present at this meeting of the Board [Rep. Tr. 221].

5. There Was Substantial Evidence Showing That the Greco Matter (Count Five) Was Pending Before Appellant in His Official Capacity.

Appellant does not dispute the fact that $300 in cash was received in this matter from Don Greco [Rep. Tr. 421]. Appellant himself testified that this matter came

before Rent Advisory Board No. 8 on four occasions [Rep. Tr. 422-425, incl.]. Hill stated that he prepared the application and schedule filed with the Area Rent Director [Ptf's Ex. 23]. A notation in Exhibit 23 indicates that the action for a rental increase was *initiated by Advisory Board No. 8.*

The transcript is replete with admissions by appellant that he inspected this property, felt strongly that a rental increase was warranted, and that he and Hill sent photographs to the Area Rent Director along with this application [Rep. Tr. 421]. In this connection appellant again betrayed the organized nature of his bribery scheme when he said:

> "I don't recall whether we were given the pictures or we took the pictures . . . sometimes we went out and took pictures—that is, I went with Mr. Hill and he would take them or I would take them" [Rep. Tr. 421, lines 6-11, incl.]

Greco received permission to raise his rentals approximately three or four months after he paid Cly and Hill the $300 [Rep. Tr. 174, 175].

It is to be noted that at the close of the plaintiff's case in the trial court, defense counsel made separate motions for acquittal on every count *except Count Five* [Rep. Tr. 365-370, incl.; renewal of motions after both sides rested, Rep. Tr. 566, 567]. At the time counsel was making separate motions he said when he came to Count Five: "We will pass Count No. 5" [Rep. Tr. 368].

6. There Was Substantial Evidence Showing That the Wescoatt Matter (Count Seven) Was Pending Before Appellant in His Official Capacity.

Wescoatt read of Cly and Hill in the Venice newspaper and he went to the address given in the newspaper and there had a conversation with Cly. After learning Mr. Wescoatt's problem, Cly said, "Mr. Hill makes out these papers" [Rep. Tr. 132]. Hill inspected the property and in a subsequent conversation with Hill present, Cly said, "We will do the whole job for $100." Wescoatt thereupon paid Cly $100 in cash [Rep. Tr. 138]. Cly admitted this [Rep. Tr. 431].

The evidence is uncontradicted that Hill filed the necessary papers with the Area Rent Director [Ptf's Ex. 21]. Cly admitted that he examined this property two or three months before he accepted the $100 [Rep. Tr. 430].

Hill testified that this matter was brought before the Board and that a favorable recommendation for a rental increase was made. Cly was present and Hill was sure that Cly voted for the increase "because it took a majority of the—lots of times the others were against us so we would turn it down" [Rep. Tr. 224, 225].

Approximately three months after payment of the $100 to Cly, Wescoatt received authority from the Area Rent Director to increase rentals [Rep. Tr. 136; Ptf's Exs. 6-9, incl.].

7. There Was Substantial Evidence Showing That the Preston (Count Eight) and Barker (Count Nine) Matters Were Pending Before Appellant in His Official Capacity.

Mrs. Barker testified that she and her sister, Mrs. Preston, read an article in a Santa Monica newspaper which told of Cly and Hill and gave Cly's office address as the place to go for relief in "hardship and hardluck cases" [Rep. Tr. 167]. Cly admitted that he inspected some property on the day that one of the sisters first came to him, and that on the next occasion both of the sisters came in, he introduced Hill to them, and Hill talked to them [Rep. Tr. 505].

The evidence is uncontradicted that Mrs. Preston paid Cly $90 in cash and Mrs. Barker paid him $45 in cash [Rep. Tr. 157-159]. Cly admitted that when he accepted these sums the sisters had already brought their problems to him [Rep. Tr. 505]. This only corroborates previous statements by Cly that money was never accepted until the properties had been inspected and he was certain that he could recommend a raise in rental. Mrs. Barker placed the date of this payment to Cly as on or about September 4, 1948, the date alleged in Counts Eight and Nine of the Indictment.

Hill testified that he prepared the applications and schedules for rental increases in the properties involved in these two counts [Rep. Tr. 544, Ptf's Ex. 20]. It is to be noted in Exhibit 20 that there is a notation that the action for rental increase was *initiated by Advisory Board No. 8.*

Cly admitted that papers were filed on behalf of these sisters and that these properties could have come up before the Board but that he could not recall [Rep. Tr. 505].

In the spring of 1949 the sisters received authorization from the Area Rent Director to raise rentals on certain of the properties involved in these counts.

8. There Was Substantial Evidence Showing That the Cohen Matter (Count Eleven) Was Pending Before Appellant in His Official Capacity.

Cly admitted that the Cohens brought all of their papers to his office, at his request, and with Hill present all the papers were read. Hill handled the entire matter from that time on [Rep. Tr. 433]. Cly recalled that this matter started around June of 1948 and that Hill was doing something on the matter week after week [Rep. Tr. 500]. It is to be noted that the minutes of Advisory Board No. 8 for September 13, 1948, reflect that Cly and Hill were present and that a recommendation for rental increase was made [Rep. Tr. 339].

There is no dispute that $50 was the price charged by Cly, but Cly recalled that only about $35 was paid [Rep. Tr. 436].

Hill stated he filed the application and schedule for rental increase and identified the papers [Rep. Tr. 543; Ptf's Ex. 19]. It is to be noted that there appears in Exhibit 19 a statement that the action for rental increase was *initiated by Advisory Board No. 8.*

V.

There Was Sufficient Competent Evidence on the Issue of Appellant's Criminal Intent and the Trial Court Properly Admitted Testimony of Earl J. Templeton on This Issue of Intent.

The legal proposition that separate and distinct acts or offenses are inadmissible in a trial is too well established to require authority. It is equally well established that an exception to this rule exists and that similar and related acts are admissible in a trial when introduced on the issue of intent, motive, or to show a common scheme or plan. This exception was recognized in the recent case from this Court of *Henderson v. United States,* 1944, 143 F. 2d 681, 683.

Appellant in his brief (App. O. B. 38, 39) has cited cases which purport to hold that testimony of Mr. Templeton should not have not have been admitted. The cases cited do not sustain this contention.

In *Cole v. Arkansas,* 1948, 333 U. S. 196, the petitioners were tried and convicted of a violation of Section 2 of a state statute. Their convictions were affirmed by the Supreme Court of Arkansas on the ground that they had violated Section 1, *describing a separate and distinct offense.* The Supreme Court properly held procedural due process had been denied, and thus reversed the conviction. The court cited as authority its earlier decision in *De Jonge v. Oregon,* 1936, 299 U. S. 353, 362. Neither the *Cole* nor the *De Jonge* case have application to this argument of appellant because the issue was due process.

Nor does the California case of *People v. Glass,* 1910, 158 Cal. 650 support appellant's argument. The reason it does not is explained by the court on page 656:

> "* * * The real reason why the evidence was offered is most obvious. It was not offered to show motive. It was not offered to show identity and plan or identity of plan. These are the veriest pretenses. *It was designed to besmirch and degrade the defendant* * * *" (emphasis added).

In *People v. Washburn,* 1930, 104 Cal. App. 662, 670 the court made it clear that where the facts regarding an alleged former bribery were inconclusive and where such alleged former bribery *was not relevant to any issue in the case,* such evidence had been improperly admitted in the trial court.

In a prosecution of the Secretary of the Interior for bribery, evidence showing a transaction closely related to the transaction on which the prosecution was based was held admissible as bearing upon motive or intent.

> *Fall v. United States* (C. A., D. C. 1931), 49 F. 2d 506, 513, cert. den. 51 S. Ct. 657, 283 U. S. 867, 75 L. Ed. 1471.

In a prosecution of a War Department employee, evidence on an earlier occasion of a proposed bribe was held admissible to show intent.

> *United States v. Baneth* (C. A. N. Y. 1946), 155 F. 2d 978.

It is submitted that the testimony of Earl J. Templeton in the instant case was properly admitted for the reason that it was a similar and related act that was admitted on the issue of intent.

VI.

The Trial Court Made Proper Comments and Properly Instructed the Jury.

A. The Trial Court Properly Instructed the Jury When It Read the Entire Bribery Statute.

Appellant in his brief (App. O. B. 42) concedes that defense counsel at the time of trial did not object to the court reading (old) 18 U. S. C. 207, but he now makes the claim that this was error, and such fundamental error as to be the basis for a reversal. A reading of the entire charge to the jury [Rep. Tr. 570 to 589, incl.] clearly shows that there was no fundamental error committed by the court in its instructions.

There is no analogy between this case and *Screws v. United States,* 1944, 325 U. S. 91, because in that case *the trial court had failed to instruct the jury on the essential elements of the only offense on which the conviction could rest.* The court very properly found this to be fundamental error. Such was not the instruction in the instant case.

Again, in the case from this Court of *Corson v. United States,* 1944, 147 F. 2d 437, the instruction of the trial court was improper because it failed to inform the jury what the applicable gasoline ration order allowed and what it forbade. This allowed the jury to assume that the law was violated and the offense committed merely on a showing of a suspicious transfer of coupons. It is clear from the instructions in the instant case that no such fatally deficient instructions were given. In the instant appeal the appellant is advancing the surprising suggestion that when the court reads in its entirety the statute on which the indictment is founded there is fundamental error committed.

Appellant is apparently confused when he states in his brief that, "The court erroneously instructed the jury on the statute that was not yet passed. The court read the jury the later statute instead" (App. O. B. 43). By referring to that portion of the instructions [Rep. Tr. 578] it is clear that the court explained the fact that there were two statutes, and then read the old section (old) 18 U. S. C. 207.

It is submitted that the court did not err in its instructions.

B. The Trial Court Followed Approved Federal Practice in Its Comments Upon the Evidence and Its Expression of Opinion on the Evidence.

Appellee agrees with the appellant that *Quercia v. United States,* 1932, 289 U. S. 466, fairly states the settled principles regarding fair comment by the trial judge. On page 469 the court says:

> "In charging the jury, the trial judge is not limited to instructions of an abstract sort. It is within his province, whenever he thinks it necessary, to assist the jury in arriving at a just conclusion by explaining and commenting upon the evidence, by drawing their attention to the parts of it which he thinks important; and he may express his opinion upon the facts, provided he makes it clear to the jury that all matters of fact are submitted to their determination (citing cases)."

In the later case of *United States v. Murdock,* 1933, 290 U. S. 389, 394, the court applies the above stated principle as follows:

> "In the circumstances we think the trial judge erred in stating the opinion that the respondent was

> guilty beyond a reasonable doubt. A federal judge may *analyze the evidence, comment upon it, and express his views with regard to the testimony of witnesses* (emphasis added). He may advise the jury in respect to the facts, but the decision of issues of fact must be fairly left to the jury (citing cases)."

In the instant case it is readily apparent from reading the instructions as a whole that the decisions on issues of fact were fairly and clearly left to the jury.

The trial judge stated to the jury in the instant appeal that this was the first time in over ten years that he had been on the bench where he felt that comments should be made [Rep. Tr. 570]. The court immediately admonished the jury that they were not bound by the comments to be made and that it was their duty to decide the guilt or innocence of the defendant and to disregard the comments [Rep. Tr. 571, 577]. The court then continued by stating that the comments were made to help them arrive at a just verdict. Later in the instructions the court restated this and pointed out that there might be a tendency on the part of the jury to feel that there had been a racket and that the jury might punish the defendant for the racket, not the crime charged. The court then stated:

> "You might resent what Mr. Cly did in this case but unless you believe he accepted a bribe it is your duty to find him not guilty" [Rep. Tr. 576].

It is submitted that none of the matters mentioned by appellant (App. O. B. 43-49, incl.) with regard to comments by the court violate the settled principles of fair comment set forth in the *Quercia* and *Murdock* cases.

C. The Trial Court Made a Proper Comment During the Trial.

Appellant asserts (App. O. B. 40, 41) that the trial court committed prejudicial error in a statement made during the course of the trial. This assertion is without foundation.

While the court did comment that when one is in government business it is known that such persons do not have to be paid to do their work, the court twice clearly admonished the jury that its comments were not binding upon the jury. Further, in its instructions to the jury the court again made it clear to the jury that the basic issue in the case was whether the money accepted by Cly was for service or was for a bribe, and that the jury was the final judge on this issue [Rep. Tr. 577]. The court instructed in part as follows:

> "Let me say to you that the only question here is whether or not this defendant accepted bribes as set forth in the indictment" [Rep. Tr. 572]. "They say they were only supposed to be working while they were on the board, sitting on the board. Would I be justified in accepting money as an attorney and then pass upon the case before me and say that I was accepting the money as services and not as a bribe and be justified in doing it" [Rep. Tr. 574].

Appellant's reference to the Clerks of Courts and United States Marshal's office accepting fees does not assist him. The court can well take judicial notice of the fact that such fees paid to these governmental employees are paid into the Treasury and not into the pockets of the employees involved.

Conclusion.

For the foregoing reasons the judgment should be affirmed.

Respectfully submitted,

ERNEST A. TOLIN,
United States Attorney,

WALTER S. BINNS,
Chief Asst. United States Attorney,

VINCENT N. ERICKSON,
Assistant United States Attorney.

Attorneys for Appellee.

Summati

Count No.	Date Alleged in Count	Property O
3	12/6/48	Mr. & Mrs. Cl
4	11/17/48	Mr. & Mrs. H
5	6/29/48	Don Greco
7	11/20/48	Norman Wesc
8	9/ 4/48	Mrs. Mabel Pi
9	9/ 4/48	Mrs. Frances
11	7/15/48	Mr. & Mrs. F

[1]Exhibits applicable to more t
Exhibit 11—Map
Exhibit 13)
" 14)—Board N
" 15)

Exhibit No. in Trial Court	Desc
1	$50 check payable to dated 12/6/48 (sign
5	$250 check payable to dated 11/15/48
6	Notification of rent i Area Rent Director,
7	Copy of Exhibit 6
8	Copy of Exhibit 6
9	Copy of Exhibit 6
11	Map of "Bay Area" sl No. 8, identified by when offered in evi
12	Reinspection letter sent of Don Greco, letter
13	Minutes of Advisory 12 refers to Don C and moved further i
14	Oath of Office signed
15	Minutes of Advisory B
15-A	Minutes of Advisory B 1948)
18	Area Rent Director's he prepared this file
19	Area Rent Director's prepared this file [5
20	Area Rent Director's F states he prepared th
21	Area Rent Director's he prepared this file
23	Area Rent Director's prepared this file [54

[1]Only those Exhibits regardin

APPENDIX B.

Data Regarding Exhibits.[1]

tion of Exhibit	Marked for Ident. [Rep. Tr. pg. no.]	Admitted in Evid. [Rep. Tr. pg. no.]	Count to Which Exhibit Refers
onte Cly given Cly by Chapman, l Elizabeth Chapman)	21	22	3
ash given Hill by Esther Neiditch,	73	221	4
crease sent to Mr. Wescoatt, by ncrease effective 11/23/48	134	137	7
	134	137	7
	134	137	7
	134	137	7
owing jurisdiction of Advisory Bd. Mr. Hill—no objection by def. ence	187	188	(all cts.)
by Area Rent Dir. to Hill re ppty dated 8/20/48	191	502	5
d. #8 for Aug. 13, 1948, Para. reco; refers to 8/2/48 discussion creases be allowed	194	302	Re Many Counts
n 11/6/47 by Cly, minutes, etc.	238	302	
oard No. 8	298	300	
d. No. 8 (Jan., Feb., March, Oct.	—Mentioned in Rep. Tr. p. 569.		
File re Chapman case—Hill states [539]	537	569	3
File re Cohen case—Hill states he 43]	537	569	11
ile re Preston & Barker cases, Hill is file [544]	537	569	8 & 9
File re Wescoatt case—Hill states [545]	537	569	7
File re Greco case—Hill states he 6]	545	569	5

g counts on which Cly was convicted are included above.

APPENDIX C.

Statutes Involved.

A. *(Old) Title 18 U. S. C. § 207* reads as follows:

"§ 207. (*Criminal Code, section* 117.) *Official accepting bribe.* Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States. (R. S. §§ 5501, 5502; Mar. 4, 1909, c. 321, § 117, 35 Stat. 1109.)"

B. *(New) Title 18, U. S. C. § 202* reads as follows:

"§ 202. *Acceptance or solicitation by officer or other person.*

Whoever, being an officer or employee of, or person acting for or on behalf of the United States, in an official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, asks, accepts, or receives any money, or any check, order, contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both; and shall forfeit his office or place and be disqualified from holding any office of honor, trust, or profit under the United States."

C. *Pertinent provisions of the Housing and Rent Statutes Involved.*

Only the portions of the Housing and Rent Law effective between November 6, 1947, and January 15, 1949, are set forth below. The reason for this is that appellant took his Oath of Office as a member of Rent Advisory Board No. 8 on November 6, 1947, and his resignation from that Board was made effective January 15, 1949. The Housing and Rent Law first in effect during this period was the Housing and Rent Act of 1947, Public

Law 129, effective July 1, 1947, Ch. 163, 61 Stat. 193. Certain provisions of the 1947 Act were amended in the Housing and Rent Act of 1948, effective April 1, 1948, Ch. 161, 62 Stat. 93.[1] The amendments made in the Housing and Rent Act of 1948 were generally an expansion and amplification of the provisions of the 1947 Act. Appellant in his Brief (A. Op. pp. 3-8, incl.) has apparently by oversight quoted the Act as it reads today and not as it read during the pertinent period, namely, November 6, 1947, through January 15, 1949.

While appellee agrees that the general sections covered in appellant's brief are the ones most pertinent to the case, we wish to correct the record so that the Court may have before it the provisions of the Housing and Rent Law actually in effect at the time appellant was on the Rent Advisory Board.

The portion of the Housing and Rent Act of 1947 quoted in the appellant's brief was apparently copied by mistake from the 1951 Cumulative Supplement to Title 50 App., Sec. 1894, thereof and more particularly to pages 704 and 705 of that Section. For the sake of clarity, the portion of the Housing and Rent Act of 1947 quoted in Appellant's Opening Brief will be set forth below, and *those portions not in effect during the period involved herein will be italicized.* The quotation which follows, except as otherwise noted, will be from the Housing and Rent Act of 1948, Ch. 161, 62 Stat. 93, beginning at page 95 thereof.

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[1]The Housing and Rent Act of 1948, Sec. 204(e), 62 Stat. 98, provided that said Act should be effective until the close of March 31, 1949.

"(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title [*this appendix*] ceases to be in effect, in any defense-rental-area or portion thereof or with respect to any class of housing accommodations in any such area or portion thereof, if in his judgment the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exist, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. *The Housing Expediter is further authorized and directed to remove maximum rents from any or all luxury housing accommodations in any defense-rental area or portion thereof, if in his judgment such action would result in the creation of additional rental units by conversion.* The Housing Expediter shall from time to time make surveys with a view to carrying out the purpose of this subsection to decontrol housing accommodations at the earliest practicable time.

"(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202(c).[1]

"(e) (1) The Housing Expediter is authorized and directed to create *and, if necessary continue in existence until the termination of this Act* in each defense-rental area *whether or not under Federal rent control* or such portion thereof as he may designate, a local advisory

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[1]This subsection (d) appears in the Housing and Rent Act of 1947, and it was not amended in the Housing and Rent Act of 1948.

board, *The Housing Expediter shall whenever in his judgment there is need therefor, create a local advisory board in any part of an area designated under the provisions of the Emergency Price Control Act of 1942, as amended [50: Appx. 25], prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were not being regulated under such Act on March 1, 1947,* each such board shall consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors: *Provided,* That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948 [*Mar. 30, 1948*] from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title [*this appendix*] within its area; and before recommending any such adjustment the board shall

give notice to the parties and shall hold a hearing at the request of either party. *Upon petition by a representative group of tenants or landlords, the board, if it finds that the petition is substantial in character, shall hold a public hearing in accordance with the requirements set forth in paragraph (4) of this subsection on any of the matters set forth in subparagraphs (A) and (B) of this paragraph. Such hearing shall be begun within thirty days after the filing of such petition, and shall be completed within thirty days after it is begun. Should the board for any reason fail to hold such hearing, the Housing Expediter, upon notice of that fact given by such group, shall (unless he finds that the petition is not substantial in character) hold a public hearing in like manner on such matters. Such hearing shall be begun within thirty days after the giving of such notice by such group, and shall be completed within thirty days after it is begun. If the Housing Expediter finds that such petition is not substantial in character, such group may file a complaint with the Emergency Court of Appeals within thirty days after the date such finding is made. Thereupon, if it finds that the Housing Expediter's finding is not in accordance with law, the Emergency Court of Appeals shall have jurisdiction to enter, within thirty days after the date of filing of such complaint, an order directing the Housing Expediter to hold such hearing. If a hearing is held by either the board or the Housing Expediter, a recommendation by the board or decision by the Housing Expediter, as the case may be, on the merits of the matter shall be*

rendered within thirty days from the date of completion of such hearing, and the local board forthwith shall forward its recommendation to the Housing Expediter.[1] Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

"(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

"(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title [*this appendix*]; and

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[1]This portion of appellant's quotation would seem to refer in general context to Secs. 204(e)(3) and 204(e)(4), found on pp. 96 and 97 of 62 Stats.

"(C) Operations generally of the local rent office with particular reference to hardship cases.

"(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and *reporting services for public hearings (including attendance fees) and* shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards."

Section 204(e)(3) of the Housing and Rent Act of 1948, provides as follows:

"Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect."[1]

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[1]This section 204(e)(3) of the Housing and Rent Act of 1948 has been added by appellee for the assistance of the Court.